

## Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

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PLR-154406-06

Date:

August 30, 2007

### Legend:

Taxpayer 1	=
Taxpayer 2	=
Daughter	=
Trust	=
Company	=
Date 1	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
A	=
B	=
C	=
D	=
E	=
F	=

Dear :

This is in response to a letter dated November 17, 2006 and subsequent correspondence, submitted by your personal representative, requesting rulings under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

The facts submitted and the representations made are as follows. On Date 1, Taxpayer 1 created Trust. Trust consists of five trusts, one of which is for the benefit of Daughter (Daughter's Trust). Daughter's Trust has generation-skipping transfer (GST) tax potential.

In Year 1, Taxpayer 1 made a gift of stock in Company to Daughter's Trust. Taxpayer 1 valued the gift at \$A. Also, in Year 1, Taxpayer 2 made a gift of stock in Company to Daughter's Trust. Taxpayer 2 valued the gift at \$B. Taxpayer 1 and Taxpayer 2 hired an accounting firm to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. In preparing the Forms 709, the accounting firm failed to allocate or advise Taxpayer 1 and Taxpayer 2 to allocate their respective GST exemptions to their gifts to Daughter's Trust. In Year 1, Taxpayer 1 and Taxpayer 2 did not elect to treat gifts made by either of them in Year 1 as made by both pursuant to § 2513.

In Year 2, Taxpayer 1 made a gift of stock in Company to Daughter's Trust. Taxpayer 1 valued the gift at \$C. Taxpayer 1 and Taxpayer 2 hired an accounting firm to prepare their Year 2 Forms 709. In preparing the Forms 709, the accounting firm failed to allocate or advise Taxpayer 1 and Taxpayer 2 to allocate their respective GST exemptions to the gift to Daughter's Trust. In Year 2, Taxpayer 1 and Taxpayer 2 elected to treat gifts made by either of them in Year 2 as made by both pursuant to § 2513.

In Year 3, Taxpayer 2 made a gift of stock in Company to Daughter's Trust. Taxpayer 2 valued the gift at \$D. Taxpayer 1 and Taxpayer 2 hired an accounting firm to prepare their Year 3 Forms 709. In preparing the Forms 709, the accounting firm failed to allocate or advise Taxpayer 1 and Taxpayer 2 to allocate their respective GST exemptions to the gift to Daughter's Trust. In Year 3, Taxpayer 1 and Taxpayer 2 elected to treat gifts made by either of them in Year 3 as made by both pursuant to § 2513.

In Year 4, Taxpayer 2 made a gift of stock in Company to Daughter's Trust. Taxpayer 2 valued the gift at \$D. Taxpayer 1 and Taxpayer 2 hired an accounting firm to prepare their Year 4 Forms 709. In preparing the Forms 709, the accounting firm failed to allocate or advise Taxpayer 1 and Taxpayer 2 to allocate their respective GST exemptions to the gift to Daughter's Trust. In Year 4, Taxpayer 1 and Taxpayer 2 elected to treat gifts made by either of them in Year 4 as made by both pursuant to § 2513.

In Year 5, Taxpayer 1 and Taxpayer 2 each made gifts of stock in Company to Daughter's Trust. Taxpayer 1 and Taxpayer 2 valued each of their gifts at \$E. Taxpayer 1 and Taxpayer 2 hired an accounting firm to prepare their Year 5 Forms 709. In preparing the Forms 709, the accounting firm failed to allocate or advise Taxpayer 1 and Taxpayer 2 to allocate their respective GST exemptions to their gifts to Daughter's Trust. In Year 5, Taxpayer 1 and Taxpayer 2 elected to treat gifts made by either of them in Year 5 as made by both pursuant to § 2513.

In Year 6, Taxpayer 1 made a gift of stock in Company to Daughter's Trust. Taxpayer 1 valued the gift at \$F. Taxpayer 1 and Taxpayer 2 hired an accounting firm to prepare their Year 6 Forms 709. In preparing the Forms 709, the accounting firm failed to allocate or advise Taxpayer 1 and Taxpayer 2 to allocate their respective GST exemptions to the gift to Daughter's Trust. In Year 6, Taxpayer 1 and Taxpayer 2 elected to treat gifts made by either of them in Year 6 as made by both pursuant to § 2513. It has been represented that Taxpayer 1 and Taxpayer 2 each have sufficient GST exemption available to allocate to the gifts made to Daughter's Trust.

Taxpayer 1 and Taxpayer 2 are requesting an extension of time pursuant to §§ 2642(g), 301.9100-1, and 301.9100-3, to allocate their respective available GST exemptions to the gifts to Daughter's Trust made in Years 1 through 5, that the GST exemption allocated to the gifts will be effective as of the date each gift was made, and that their GST exemption was automatically allocated to the Year 6 gift to Daughter's Trust pursuant to § 2632(c).

#### Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a) (in effect at the time of the transfers) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(c)(1) provides that if any individual makes an indirect skip during the individual's lifetime, any unused portion of the individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for the property zero. If the amount of the indirect skip exceeds the unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(2) provides that for purposes of § 2632(c)(1), the unused portion of an individual's GST exemption is that portion of the exemption that has not previously been--(A) allocated by the individual, (B) treated as allocated under § 2632(b) with respect to a direct skip occurring during or before the calendar year in which the indirect skip is made, or (C) treated as allocated under § 2632(c)(1) with respect to a prior indirect skip.

Section 2632(c)(3)(A) provides that for purposes of § 2632, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

Section 2632(c)(3)(B) provides that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless--(i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons before the date that the individual attains age 46, on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or upon the occurrence of an event that may reasonably be expected to occur before the date that such individual attains age 46; (ii) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals; (iii) the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in § 2632(c)(3)(B)(i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals; (iv) the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer; (v) the trust is a charitable lead annuity trust (within the meaning of § 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of § 664(d)); or (vi) the trust is a trust with respect to which a deduction was allowed under § 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate. For purposes of § 2632(c)(3)(B), the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in § 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

Section 26.2632-1(b)(2) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) – (A) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an ETIP, its value at the time of the close of the ETIP, and (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an ETIP, on and after the close of such ETIP.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of the GST tax.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except

in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer 1 and Taxpayer 2 are granted an extension of time of sixty (60) days from the date of this letter to allocate their respective available GST exemptions to the gifts made to Daughter's Trust in Years 1 through 5. The allocations should be made on supplemental Forms 709 for Years 1 through 5 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

Based upon the facts submitted and the representations made, the terms of Daughter's Trust meet the definition of a GST trust as defined in § 2632(c)(3)(B). Accordingly, pursuant to §§ 2632(c)(1), 2632(c)(3)(A), and 2652(a)(2), Taxpayer 1's and Taxpayer 2's GST exemption were automatically allocated to the gift to Daughter's Trust made in Year 6.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning the value of any gift made by Taxpayer 1 and Taxpayer 2 to any trust or individual for Federal transfer tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes